A BILL FOR AN ACT

CONCERNING LIMITATIONS ON THE USE OF AUTOMATED DIALING SYSTEMS TO MAKE TELEPHONE CALLS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Prohibits the use of an automated dialing system to make a telephone solicitation, except when:

! The recipient has previously consented or has a preexisting business or personal relationship with the caller; or

! The prerecorded message is initiated by a live operator who, at the beginning of the call, discloses the identity of the caller; the purpose of the message; the type of goods or
services being offered; the fact that the message intends to solicit payment or commitment of funds, if applicable; and the fact that the recipient of the call may opt out of receiving future calls.

Exempts automated calls from a school or university to students, parents, or employees. Exempts "reverse 911" emergency calls. Punishes violations as a class 2 petty offense, with a fine of up to $2,500 per violation.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 18-9-311, Colorado Revised Statutes, is amended to read:

18-9-311. Use of prerecorded or synthesized voice messages - definitions. (1) AS USED IN THIS SECTION:

(a) "AUTOMATED DIALING SYSTEM" MEANS A DEVICE THAT SELECTS AND DIALS TELEPHONE NUMBERS AND THAT, WORKING ALONE OR IN CONJUNCTION WITH OTHER EQUIPMENT, DISSEMINATES A PRERECORDERD OR SYNTHESIZEDVOICE MESSAGE TO THE TELEPHONE NUMBER CALLED.

(b) "CALLER" MEANS A PERSON, CORPORATION, FIRM, PARTNERSHIP, ASSOCIATION, OR LEGAL OR COMMERCIAL ENTITY THAT CONTACTS OR ATTEMPTS TO CONTACT A SUBSCRIBER IN THIS STATE BY USING A TELEPHONE OR A TELEPHONE LINE.

(c) "MESSAGE" MEANS ANY TELEPHONE CALL, REGARDLESS OF ITS CONTENT.

(d) "SUBSCRIBER" MEANS:

(I) A PERSON WHO PURCHASES TELEPHONE SERVICE FROM A PROVIDER OF TELEPHONE SERVICE; AND

(II) ANY PERSON LIVING OR RESIDING WITH A PERSON DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (d).

(2) No person shall utilize an automated dialing system
with a prerecorded message for the purpose of soliciting another person
to purchase goods or services, whether such solicitation occurs or is
intended to occur during the prerecorded message or during some further
communication initiated by or resulting from the prerecorded message,
unless there is an existing business relationship between such persons and
the person being called then consents to hear the prerecorded message.

UNLESS:

(a) THE SUBSCRIBER HAS KNOWINGLY OR VOLUNTARILY
REQUESTED, CONSENTED TO, PERMITTED, OR AUTHORIZED RECEIPT OF THE
MESSAGE; OR

(b) THE MESSAGE IS IMMEDIATELY PRECEDED BY A LIVE OPERATOR
WHO OBTAINS THE SUBSCRIBER'S CONSENT BEFORE THE MESSAGE IS
DELIVERED.

(3) THIS SECTION SHALL NOT APPLY TO:

(a) MESSAGES FROM SCHOOL DISTRICTS, COLLEGES, OR
UNIVERSITIES TO STUDENTS, PARENTS, OR EMPLOYEES;

(b) MESSAGES FROM A LAW ENFORCEMENT OR EMERGENCY
RESPONSE AGENCY NOTIFYING A PERSON OF AN EMERGENCY; OR

(c) MESSAGES TO SUBSCRIBERS WITH WHOM THE CALLER HAS AN
ESTABLISHED BUSINESS OR PERSONAL RELATIONSHIP.

(4) IN CASES WHERE THE MESSAGE IS IMMEDIATELY PRECEDED BY
A LIVE OPERATOR, THE OPERATOR SHALL, AT THE BEGINNING OF THE
MESSAGE, DISCLOSE THE FOLLOWING:

(a) THE NAME OF THE BUSINESS, FIRM, ORGANIZATION,
ASSOCIATION, PARTNERSHIP, OR ENTITY ON BEHALF OF WHICH THE
MESSAGE IS BEING MADE;

(b) THE PURPOSE OF THE MESSAGE;
(c) The type of goods or services the message is promoting;

(d) If applicable, the fact that the message intends to solicit payment or commitment of funds; and

(e) The opportunity for the subscriber to be excluded from future messages from that business, firm, organization, association, partnership, or entity.

(2) Any person who violates this section commits a class 1 petty offense, class 2 petty offense, and, upon conviction thereof, shall be punished by a fine of up to two thousand five hundred dollars per violation.

SECTION 2. 16-13-303 (1.5), Colorado Revised Statutes, is amended to read:

16-13-303. Class 1 public nuisance. (1.5) All equipment, mechanical systems, or machinery, or parts thereof, shall be deemed to be a class 1 public nuisance at the location of the automatic dialing system when used for soliciting with an automatic dialing system containing a prerecorded message in violation of section 18-9-311, (1), C.R.S.

SECTION 3. 16-13-304 (1) (b.5), Colorado Revised Statutes, is amended to read:

16-13-304. Class 2 public nuisance. (1) The following are deemed to be a class 2 public nuisance:

(b.5) Any public or private place or premises used for soliciting by means of a prerecorded message in violation of section 18-9-311, (1); C.R.S.; or

SECTION 4. Effective date - applicability. (1) This act shall take effect at 12:01 a.m. on the day following the expiration of the
ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, (August 6, 2008, if adjournment sine die is on May 7, 2008); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

(2) The provisions of this act shall apply to telephone solicitations made on or after the applicable effective date of this act.